IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.181 OF 2006

Vithal M. Gosavi ...Petitioner.

Versus

The Joint Charity Commissioner
Kolhapur Region & Ors. ...Respondents.

Shri S.S.Patwardhan for the Petitioner.
Shri Yogesh S. Thakur for Respondent No.3.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 21st FEBRUARY, 2006.

P.C. :

. Rule.

2. Service on other respondents is dispensed with and the learned Counsel appearing for the contesting respondent (respondent No.3) is heard.

3. An application was filed before the Assistant Charity Commissioner during the course of an inquiry that one of the witnesses in the proceedings, viz., Vithal Mahadeo Gosawi, who is 85 years of age and having suffered two heart-attacks, should be examined on commission. Another request that was made is that instead of subjecting him to a oral

examination-in-chief, his examination-in-chief may be recorded as and by way of an affidavit. These requests were opposed by the Trust and that is how they came to be rejected by the Assistant Charity Commissioner.

4. In my view, grant of requests of the aforesaid nature could not have prejudiced either the Trust or parties to the enquiry. It is not as if the witness is not willing to depose or that the parties are objecting to his being examined.

5. The facility is sought considering his age that he should be allowed to file affidavit evidence and thereafter his cross-examination be held in the presence of a Court-Commissioner rather than he attending the office of the Assistant Charity Commissioner on all dates, on which the matter may be fixed. Such requests should not have been rejected and considering the peculiar facts and circumstances, the impugned order cannot be sustained. The order under challenge is, therefore, set-aside. Both applications are granted. The witness should depose as and by way of examination-in-chief on affidavit and upon such affidavit being taken on record and copies served on the parties to the enquiry or on such of them who desire to cross should cross-examine him in the

presence of the Court-Commissioner, to be appointed by the Assistant Charity Commissioner. The Commissioner shall thereafter forward the report as well as the proceedings. The details pertaining to his appointment and remuneration to be decided by the Assistant Charity Commissioner and appropriate directions be issued by him in that behalf. The exercise of examining this witness on commission to be completed within a period of eight weeks from the date of receipt of copy of this order. It is clarified that while passing this order, the rival contentions on merits have not been gone into and it would be open for the parties to raise them at an appropriate stage. Rule made absolute in above terms. However, there shall be no order as to costs.

(S.C.DHARMADHIKARI,J.)